IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 9TH OCTOBER 2006 / 17TH ASWINA 1928

CRL.A.No. 658 of 2002(C)

CC.104/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NEDUMKANDOM

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APPELLANT: COMPLAINANT

K.K.MOHANKUMAR S/O.KUMARAN,
KODIYANICHIRA VEEDU, CHEMMANNAR KARA, UDUMBANCHOLA VILLAGE, UDUMBANCHOLA TALUK.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.GEORGE MATHEWS

RESPONDENTS: ACCUSED

M.K.RAMACHANDRAN, S/O.KUNJUKOCHU,
MANNARUKUNNEL VEEDU, NEENDOOR P.O.,
ONAMTHURUTHU VILLAGE, KOTTAYAM TALUK.

BY ADV. SRI.P.K.MEETHIYAN KUNJU
SRI.JAYACHANDRAN.B.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

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Crl.A.No. 658 of 2002

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Dated this the 9th day of October, 2006.

J U D G M E N T

This appeal is directed against the judgment of acquittal passed by the court below in a complaint filed by the appellant alleging commission of an offence punishable under Section 138 of the Negotiable Instruments act. While acquitting the respondent/accused the court below took the view that the appellant/complainant had failed to prove that the cheque in question had been issued by the respondent/accused in discharge of a legally enforceable debt and that the said cheque was issued only as security towards an earlier debt. Learned counsel contends that the above finding is totally illegal and unsustainable.

2. The case of the appellant before the court below was that the accused had issued Ext.P1 cheque for a sum of Rs.one lakh in discharge of liability incurred by him. The accused had borrowed the above sum of Rs.one lakh from his residence on January 2, 1999 . In discharge of the said debt, the accused had issued Ext.P1 cheque dated January 15, 1999. However when the cheque was presented for encashment, it was dishonoured due to insufficiency of funds in the account of the accused. Inspite of statutory notice issued by the complainant, the liability was not discharged. Hence the complaint.

3. The complainant was examined as PW.1 before the trial court and Exts.P1 to P7 were marked on his side. Dws.1 and 2 were

examined on the side of the accused and Exts.D1 to D4 were also marked.

4. The accused contended before the court below that Ext.P1 cheque was not issued by him in the circumstances as alleged by the complainant. He admitted the signature in Ext.P1 cheque. But according to him he had handed over the blank cheque along with a signed blank stamp paper to the complainant as security. The complainant had agreed to act as a Psychiatrist in a telefilm to be produced by M/s. Rajarajakala. The accused was the Director of the said film. Ext.D2 agreement was executed between the complainant and the accused in this connection . Accused had signed in the agreement as authorised by M/s.Rajarajakala. In the said agreement the remuneration of the complainant was fixed as Rs.8,000/- and he was paid Rs.4,000/- at that time. According to the accused it was further agreed that the complainant would make available his motorbike for the purpose of shooting of the telefilm. It was pursuant to the above understanding that the accused had handed over the blank cheque and stamp paper to the complainant as security.

5. The other contention raised by the accused was that he was on duty in his office (Sub Registrar's office, Ettumanoor) on January 2, 1999 and therefore there was no possibility for him to go to the residence of the complainant on that day as alleged in the complaint. The accused produced Exts.D3 and D4 and examined a colleague of his in the Sub Registry Office to prove those documents. DW.1 who was stated to be the Proprietor of M/s.Rajakala proved Ext.D1 which was stated to be a letter authorising the accused to represent the

Proprietary concern.

6. Learned counsel for the appellant has taken me through the depositions of the complainant and the witnesses examined in the case and also the documents produced by either side. The court below accepted the case of the defence that it was probable that Ext.P1 cheque was issued by the accused as security in connection with Ext.D2 contract by which the complainant had agreed to act in a telefilm that was to be directed by the accused for and on behalf of M/s.Rajarajakala. It is pertinent to note that in Ext.D2 agreement the total remuneration fixed was only Rs.8,000/- out of which Rs.4,000/- was admittedly received by the complainant on the date of agreement itself. What remained was only Rs.4,000/- to be paid to the complainant on completion of the telefilm. Curiously there is not even a mention of the motorbike belonging to the complainant to be made available for the purpose of shooting of the film. Even assuming that the complainant had made available his bike for the said purpose, it is not clear as to why the accused had given signed cheque and a stamp paper to the complainant.

7. The definite case of the complainant was that the accused had borrowed a sum of Rs.one lakh from his residence on January 2, 1999 and that he had issued Ext.P1 cheque dated January 15, 1999 in discharge of the said debt. It is pertinent to note that Ext.D2 agreement was executed on February 20, 1998. The accused had never stepped into the box. It is not discernible from the materials on record on what date he had allegedly handed over the blank cheque and stamp paper to the complainant. In the course of questioning under Section 313 of the

Code, the accused had vaguely stated that he had handed over those documents to the complainant during the shooting of the telefilm. He did not say whether it was at the time when Ext.D2 agreement was executed or thereafter that he had given the cheque to the complainant. But still the learned Magistrate found that the case of the accused that the cheque was entrusted to the complainant as security was more probable.

8. As noticed already, the total remuneration payable to the complainant for acting in the telefilm was only Rs.8,000/- out of which Rs.4,000/- was already paid. What remained was only a sum of Rs,4,000/-. It is not a very substantial amount. Even assuming that the complainant had made available his motor bike for the purpose of shooting, it does not stand to reason that the accused would have handed over a signed blank cheque leaf and a signed stamp paper to the complainant. It must be remembered that the accused was only the Director of the film. Even assuming the complainant had entrusted the bike for the purpose of shooting, it is not probable that the accused would have handed over a blank cheque and stamp paper to the complainant as security. The producer of the film, under normal circumstances, ought to have taken up the responsibility of furnishing any security. Of course Ext.D1 has been pressed into service by the accused which is stated to be an authorization letter given by the producer to the accused to do whatever is necessary in connection with the production of the film. I am not at all impressed by the above document which can only be termed as a self serving one. Ext.D1 is dated November 12, 1997. Ext.D2 agreement is dated February 20,

1998. Significantly there is not even a whisper about entrustment of cheque and stamp paper as security in Ext.D2 agreement. In my view, the learned Magistrate has jumped to unwarranted conclusions which do not appear to be sustainable. Similarly the reasoning of the learned Magistrate on the plea of alibi also does not appear to be correct.

9. Having regard to the entire aspects of the case I am of the view that the judgment of the court below is liable to be set aside. I do so. The case is remitted to the court below for fresh consideration. The court below shall dispose of the case after affording the parties opportunity to adduce further evidence, if any, in accordance with law, as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

Crl.Appeal is disposed of in the above terms.

A.K. Basheer
Judge.

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